THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.27561 OF 2005

Dated: 26-12-2005

Between

Pothula Swamy Naidu, S/o. Thatha @ Venkanna,

Occ: Cultivation,R/o. Gunthindeevi Village,

I. Polavaram Mandal and others.

...PETITIONERS

AND

The Commissioner, Endowments Department,

Tilak Road, Hyderabad and others.

...RESPONDENTS

ORDER:

Petitioners seek a Writ of Mandamus to declare the impugned auction notice dated 12.12.2005 issued by the fourth respondent proposing to conduct the auction of the lands admeasuring

Ac.14.39 cents situated in S.No.290, 163/3, 163/6 of Guttinadevi Village, I. Polavaram Mandal, East Godavari District on 27.12.2005 during the middle of the second crop as illegal and arbitrary.

Learned counsel for the petitioners submits that the first petitioner has originally taken the lease of above-mentioned lands in the year 1964 in the interest of the joint family of the first petitioner and he has been paying the maktha since then. Petitioners 2 and 3 are the sons

of the first petitioner and the petitioners 4 to 6 are the sons of the brother, Late Balaram, of the first petitioner. The learned counsel further submits that Mr. Balaram died three years ago and his sons also have a share in the said property. All the petitioners are cultivating the land individually in an extent of Ac.2.50 cents each.

Admittedly, the lease was granted to the first petitioner alone and not to the individual persons. If that be so, the question of dividing the leased property in the joint family does not arise. However, all leases stand cancelled by virtue of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act').

The learned counsel for the petitioners further submits that the first petitioner filed an application before the third respondent to declare him as small farmer but the said application has been dismissed by order dated 10.01.2005 in M.A.No.361 of 2004.
As against the said order the petitioners have filed an appeal before the second respondent and the second respondent dismissed the same in Appeal No.81 of 2005 by order dated 30.06.2005. The learned counsel further submits that the petitioners have been cultivating the said land from 1964 onwards and they have raised the second crop and plantation is completed, which will come up for harvest within a couple of months. Therefore, giving auction notification to lease out the said lands from second crop 2005-2006 till the second crop from 2008 – 2009 for a period of 3 ½ years is illegal and arbitrary.

The learned counsel for the petitioners further submits that the petitioners do not have any objection if the said auction is conducted from the first crop of 2006 onwards. He further submits that having permitted the petitioners to raise the second crop in the month of November/December, auctioning the cultivating rights of the second crop of 2005-2006 by the fourth respondent is arbitrary and unreasonable as the petitioners invested huge amounts for their agricultural operations.

Insofar as the contention of the petitioners that they are small farmers and are entitled for the benefits of small farmers is concerned, I am unable to accept the said contention and I do not find any infirmity legal or otherwise in the impugned orders, the auction notice dated 12.12.2005 issued by the fourth respondent, which includes the right to cultivate the second

crop for the year 2005. It is the contention of the petitioners that they have raised a second crop in the lands in question, and therefore, the petitioners are permitted to file a representation before the fourth respondent to protect their rights in respect of the second crop for the year 2005-2006 and on such a representation being filed, the fourth respondent may consider and dispose the same in accordance with law for protecting the cultivating rights of the petitioners to harvest the second crop on certain terms and conditions, if really, the petitioners have raised a second crop.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

December 26, 2005

DSK